

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 438 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

M/S. VAPI VIJAY

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Appearance:

MR PRANAV G DESAI for Petitioner  
MR KV SHELAT for Respondent No. 1

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 07/04/2000

ORAL JUDGEMENT

1. The original plaintiff has filed this appeal under Section 9 of the Ahmedabad City Civil Court Act, 1961, challenging the judgment and decree dated April 18, 1979, passed by the learned Principal Judge, City Civil Court, Ahmedabad, in Civil Suit No.3493 of 1973, by which

the learned Principal Judge dismissed the suit of the plaintiff for recovering a sum of Rs.3900/- from the respondent as damages suffered on account of the breach of contract.

2. Few relevant facts leading to filing this appeal are as under:

The appellant invited tenders on 28th April, 1970, for the purchase of springs and leaves. That respondent submitted its offer to supply the same and its offer was accepted. As the respondent failed to supply springs and leaves to the appellant, the appellant by letter dated June 24, 1970, called upon the respondent to supply the goods to the various units of the appellant-Corporation by the end of August 1970. It is the case of the appellant that the respondent had agreed to supply the materials accordingly. Eventually the respondent failed to supply the goods as per the contract and, therefore, the appellant had to purchase the goods through another agency and on account of that, appellant had to pay Rs.3343/- in excess. The appellant therefore filed suit as stated above for recovering a sum of Rs.3900/- from the respondent as damages as it had to pay to M/s.Autopins Rs.3343/- more because of the non-supply of the goods by the respondent.

3. The suit was resisted by the respondent by filing written statement at Exh.10/A, inter-alia, contending that the Court at Ahmedabad had no jurisdiction to try and entertain the suit. It was denied that the respondent had committed breach of the contract and the appellant had suffered loss. In the ultimate respondent prayed in his written statement that the suit be dismissed with costs.

4. On the rival assertions of the parties, the trial court had framed issues at Exh.35. To prove the case against the respondent, the appellant examined Haritkant Savanidhlal, who was Store Officer in the purchase department of the appellant-Corporation. On behalf of the respondent, Shantilal Nagarji Desai, who was one of the directors of the respondent-company was examined at Exh.58. Both the parties produced documentary evidence in support of their case. Reference of which shall be made as and when necessary during the course of this judgment.

5. The trial court, on overall appreciation of oral as well as documentary evidence, concluded that it had jurisdiction to entertain the suit. That the appellant had proved that the respondent had committed breach of

the suit contract by its failure to supply the goods as per the terms and conditions of the contract. However, the trial court held that the plaintiff had failed to prove that it had suffered a loss of Rs.3343/- or any amount on account of breach of contract committed by the respondent. On the above referred two conclusion, the trial court dismissed the suit of the appellant which has given rise to file this appeal.

6. Learned advocate for the appellant has referred through the entire record and proceedings of the trial court and submitted that, the appellant had proved that because of breach of contract committed by the respondent with regard to non-supply of the goods, the appellant had to purchase those goods from other company and had to loss of Rs.2013.96p/-. Counsel for the appellant further submitted that, when the court has come to the conclusion that the respondent had committed breach of the contract then the appellant should have been awarded damages which were supplied by it as it had to purchase the goods from other company. Counsel for the appellant therefore submitted that the appeal filed by the appellant deserves to be allowed and the decree of the trial court be set aside and the suit filed by the appellant be allowed with cost.

7. Learned advocate for the respondent has submitted that the reasonings of the trial court are eminent and just, and as the appellant has failed to prove that it had suffered damages on account of excess amount paid to M/s.Autopins for the purchase of goods, the suit was liable to be dismissed and the trial court was justified in dismissing the suit, therefore, the appeal be dismissed with costs.

8. The appellant before the trial court had not proved that it had paid excess amount to M/s.Autopins for the purchase of goods which was infact to be supplied by the defendant. The reasonings given by the trial court in rejecting the claim of the plaintiff-appellant for the damages suffered by it for the breach of contract committed by the respondent is cogent and convincing. Counsel for the appellant has not been able to prove the case pleaded in the plaint by the respondent, in fact, as the respondent had failed to supply the goods to the appellant-Corporation, the contract was given to M/s. Autopins at the same rates and the appellant had not suffered any damages because of the non performance of the contract by the respondent. As the appellant had failed to prove that it had to pay more price for the purchase of goods to M/s. Autopins, in my view, the

trial court was justified in rejecting the claim of the damages and the ultimate dismissal of the suit.

9. As a result for the foregoing discussion, this appeal fails and deserves to be dismissed. Rule is discharged with no order as to costs.

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